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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,293	09/17/2003	Ciprian Agapi	BOC9-2003-0062 (435)	4561
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AKERMAN SENTERFITT P. O. BOX 3188 WEST PALM BEACH, FL 33402-3188			EXAMINER MUHEBBULLAH, SAJEDA	
			ART UNIT	PAPER NUMBER
			2174	
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			04/01/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/664,293

**Applicant(s)**

AGAPI ET AL.

**Examiner**

SAJEDA MUHEBBULLAH

**Art Unit**

2174

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,4-8 and 10-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-8 and 10-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

1. This communication is responsive to Amendment filed 12/20/2007.
2. Claims 1-2, 4-8 and 10-16 are pending in this application. This action is made Final.

***Response to Amendment***

3. The declaration filed on 12/20/2007 under 37 CFR 1.131 has been considered but is ineffective to overcome the Sinclair (US 2005/0010693) reference.
4. The evidence submitted is insufficient to establish a reduction to practice of the invention in this country or a NAFTA or WTO member country prior to the effective date of the Sinclair (US 2005/0010693) reference. Applicant appears to establish conception prior to reference coupled with diligence to constructive RTP (filing) rather than actual RTP. In an actual reduction to practice the following must occur - the claimed invention actually made (e.g., an apparatus) or performed (e.g., a method) and seen to be suitable for its intended purpose, commercial perfection not required, requires recognition that a reduction to practice has occurred -- Nunc pro tunc doctrine, testing is required unless operativeness of invention is readily apparent, testing must be under actual working conditions or realistic simulation of working conditions, and test results must be repeatable. The Exhibits A-F comprising the Invention Disclosure Form as well as other correspondence, individually or together are still not evidence that provide a showing of facts in character and weight. Therefore Applicant fails to show an actual RTP.

5. The evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the Sinclair (US 2005/0010693) reference. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897). There is no evidence to establish conception.

6. The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Sinclair (US 2005/0010693) reference to either a constructive reduction to practice or an actual reduction to practice. There is no evidence to establish diligence. The affidavit fails to establish an alleged reduction to practice prior to the application filing date. There is no evidence provided by the Applicant in the critical period which is the time between the time just prior the filing date of the Sinclair (US 2005/0010693) reference to the filing date of this application. MPEP § 2138.06 states that "the critical period for diligence for a first conceiver but second reducer begins not at the time of conception of the first conceiver but just prior to the entry in the field of the party who was first to reduce to practice and continues until the first conceiver reduces to practice," and "an applicant must account for the entire period during which diligence is required." Therefore, the Sinclair (US 2005/0010693) reference is still properly cited as a prior art of reference.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-2, 4, 6-8, 10, 12-14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Leary et al. ("O'Leary", US 5,867,162) in view of Sinclair et al. ("Sinclair", US 2005/0010693) and further in view of Siefert et al. ("Siefert", US 5,726,688).

As per claim 1, O'Leary teaches a method of arranging user-modified variable names in a presentation list (O'Leary, Fig.3; col.2, lines 28-31), comprising the steps of:

receiving a system request to display variables in the presentation list (O'Leary, Fig.3, *list 300*; col.3, lines 28-29, *clicking File option displays presentation list*);

sorting the variables according to a first attribute and then sorting the variables by a second attribute and wherein user-named variables (O'Leary, Fig.3, *items in region 308*) have a greater priority than system-named variables (O'Leary, Fig.3, *items in region 304*) (col.3, lines 32-33 and lines 42-44; *section 304 variables inherently contain some indication differentiating them from section 308 variables accordingly user-named variables are given greater priority and added to the bottom of the list separate from the system-named variables*; col.4, lines 41-56); and

simultaneously presenting the user-named variables and the system-named variables (O'Leary, Fig.3, *list 300*), wherein presentment of the user-named variables and the system-named variables comprises at least one of presenting each of the user-named variables in a first

region of the list (O'Leary, Fig.3, *region 308*) and each of the system-named variables in a second region of the list (O'Leary, Fig.3, *region 304*).

However, O'Leary does not explicitly teach wherein said first attribute indicates a priority of said variables and does not teach the regions to be distinct and presenting the user-named variable in a first format and the system-named variables in a second format distinct from the first format. Sinclair teaches a method of arranging variables in a list wherein an attribute indicates a priority of the variables in the list (Sinclair, para.0040-0041). It would have been obvious to one of ordinary skill in the art at the time of the invention to include Sinclair's teaching with O'Leary's method in order to quickly access those variables which are deemed most important.

Furthermore, the method of O'Leary and Sinclair does not teach the regions to be distinct and presenting the user-named variable in a first format and the system-named variables in a second format distinct from the first format. Siefert teaches a method of arranging variables names in a presentation list wherein there exist two distinct regions, the first region names displayed in a format different from the second region names (Siefert; Fig.5, col.3, lines 57-64). It would have been obvious to one of ordinary skill in the art at the time of the invention to include Siefert's teaching with the method of O'Leary and Sinclair in order to visually distinguish between the variables.

As per claim 2, O'Leary teaches the method, wherein the method further comprises the step of displaying the variables when a user selects the variables using a drop-down control (O'Leary, Fig.3, *clicking File drop-down control displays variables*).

As per claim 4, Siefert teaches the method, wherein the step of distinguishing is accomplished using at least one among labeling and text formatting (Siefert, Fig.5, col.3, lines 57-64).

As per claim 6, O'Leary teaches the method, wherein the second attribute is a chronological order (O'Leary, col.1, lines 38-43; col.3, lines 42-45).

Claims 7 and 14 are similar in scope to claim 1, and are therefore rejected under similar rationale.

Claim 8 is similar in scope to claim 2, and is therefore rejected under similar rationale.

Claim 10 is similar in scope to claim 4, and is therefore rejected under similar rationale.

Claims 12 and 16 are similar in scope to claim 6, and are therefore rejected under similar rationale.

As per claim 13, O'Leary teaches the system, wherein the presentation list is at least one among a drop-down list and a list box (O'Leary, Fig.3, *drop-down list 300*).

9. Claims 5, 11 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Leary et al. ("O'Leary", US 5,867,162), Sinclair et al. ("Sinclair", US 2005/0010693) and Siefert et al. ("Siefert", US 5,726,688) and further in view of Blum et al. ("Blum", US 6,901,559).

As per claim 5, the method of O'Leary, Sinclair and Siefert teaches the method wherein the second attribute is a chronological order (O'Leary, col.1, lines 38-43; col.3, lines 42-45). However, the method of O'Leary, Sinclair and Siefert does not teach the attribute to be alphabetical order. Blum teaches a method of arranging variables in a list wherein the list is

arranged in alphabetical order (Blum, col.6, lines 1-10). It would have been obvious to one of ordinary skill in the art at the time of the invention to include Blum's teaching with the method of O'Leary, Sinclair and Siefert in order to organize the list for quickly locating items in the list.

Claims 11 and 15 are similar in scope to claim 5, and are therefore rejected under similar rationale.

### ***Response to Arguments***

10. Applicant's arguments filed 07/02/2007 have been fully considered but they are not persuasive.

Applicant argued that O'Leary does not teach separating user-named variables and giving them priority in a list by giving the same type of order priority to recently-opened files that is given to user-named variables.

The Examiner disagrees for the following reasons. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this case, Sinclair teaches the method of arranging variables by priority and Siefert teaches the separation of variables.

### ***Conclusion***

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).



A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

### *Communications*

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sajeda Muhebbullah whose telephone number is **(571) 272-4065**. The examiner can normally be reached on Tuesday/Thursday and alt. Mondays from 8:30 am to 5:00 pm (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley, can be reached on (571) 272-3923.

The central fax number for the organization where correspondence for this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Art Unit: 2174

/SY D. LUU/

Primary Examiner, Art Unit 2174

**Sajeda Muhebbullah**

*Patent Examiner*

*Art Unit 2174*

/S. M./